

DONNA W. LOW, Bar No. 148874
NICHOLAS J. LEONARD, Bar No. 260322
LOW McKINLEY & SALENKO, LLP
2150 River Plaza Drive, Suite 250
Sacramento, CA 95833
Telephone: (916) 231-2400
Facsimile: (916) 231-2399
Email: dwl@lmblaw.net
Email: njl@lmblaw.net

Attorneys for Defendant DIGNITY HEALTH DBA
BAKERSFIELD MEMORIAL HOSPITAL

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

ASHLEY VICKERS ON HER OWN
BEHALF AND ON BEHALF OF HER
MINOR CHILD D.H.,

Plaintiffs,

vs.

MEAD JOHNSON & COMPANY, LLC,
MEAD JOHNSON NUTRITION
COMPANY, ABBOTT LABORATORIES,
DIGNITY HEALTH D/B/A BAKERSFIELD
MEMORIAL HOSPITAL, CHILDREN'S
HOSPITAL LOS ANGELES, AND DOES 1-
10, INCLUSIVE,

Defendants.

) Case No.: 1:22-cv-00773-JLT-BAK

) **NOTICE OF MOTION AND MOTION TO**
) **DISMISS PURSUANT TO FRCP 12(b)(6)**
) **AND TO STRIKE THE COMPLAINT**
) **FOR DAMAGES PURSUANT TO FRCP**
) **12(f)**

) **Date: August 12, 2022**

) **Time: 9:00 a.m.**

) **CR: 4, 7th Floor**

) **Assigned for All Purposes to:**

) **Honorable Judge Jennifer L. Thurston**

) **Complaint Filed: April 6, 2022**

) **Action Removed: June 23, 2022**

) **Trial Date: None Set**

PLEASE TAKE NOTICE that on the date and time indicated above, or soon thereafter as
counsel may be heard by the above-entitled court, Defendant DIGNITY HEALTH DBA
BAKERSFIELD MEMORIAL HOSPITAL will move and hereby moves the Court for an order
dismissing all claims against Defendant in the Complaint for Damages with prejudice pursuant to
Federal Rule of Civil Procedure 12(b)(6) on the following grounds:

- The Complaint fails to State the sole Cause of Action against Defendant DIGNITY HEALTH DBA BAKERSFIELD MEMORIAL HOSPITAL for Negligent Failure to Warn because Plaintiffs are improperly alleging a negligent failure to warn cause of action against a hospital.
- The Complaint fails to State the sole Cause of Action of Plaintiff Ashley Vickers Individually against Defendant DIGNITY HEALTH DBA BAKERSFIELD MEMORIAL HOSPITAL for Negligent Failure to Warn because Ashley Vickers is not a proper individual Plaintiff.
- The Complaint fails to State the sole Cause of Action of Plaintiff "D.H." against Defendant DIGNITY HEALTH DBA BAKERSFIELD MEMORIAL HOSPITAL for Negligent Failure to Warn because the Complaint does not properly identify "D.H."
- The Complaint fails to state a claim against Dignity Health upon which punitive damages can be granted.
- The Complaint fails to state a claim against Dignity Health upon which attorney's fees can be granted.

PLEASE TAKE FURTHER NOTICE that Defendant DIGNITY HEALTH DBA BAKERSFIELD MEMORIAL HOSPITAL will move this Court for an Order striking the following improper and irrelevant portions of the Complaint:

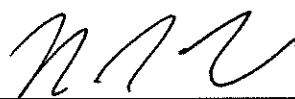
- "129. For punitive damages resulting from Defendants' oppressive, fraudulent, and/or malicious conduct, as permitted by law;" (pp. 25:22-23.)
- "131. For attorney's fees, expenses, and recoverable costs incurred in connection with this action;" (pp. 25:25.)

This motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities attached hereto, the supporting declarations, and such oral and documentary evidence as may be presented at the time the motion is heard.

June 30, 2022

LOW MCKINLEY & SALENKO, LLP

By



NICHOLAS J. LEONARD

Attorneys for Defendant DIGNITY HEALTH